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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/574,641 | 12/14/2006 | Daniel Scheibli | 09432.0065 | 2211 |

60668 7590 05/12/2009

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| EXAMINER | |
|---|---|
| LINDSEY, MATTHEW S | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2451 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 05/12/2009 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/574,641 | SCHEIBLI, DANIEL | |
| | Examiner | Art Unit | |
| | MATTHEW S. LINDSEY | 2451 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *02 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

1. Claims 1-20 are pending in this application. Claims 1, 7 and 8 are amended as filed on 2 February 2009.

### *Specification*

2. The disclosure is objected to because of the following informalities: The amendment filed 2 February 2009 to the third full paragraph of the specification contains: “The detailed description of CPP 100, carrier 970 and signal 980 is to be applied to data carriers (now shown)” (pg 2, lines 3-4). This appears to be a typographical error for: "not shown".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 101*

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7 and 11-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to “A computer readable storage medium”, and according to applicants

specification the computer readable storage medium can include paper (pg 11, lines 11-12).

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**6. Claims 1-8, 10-13 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawata et al. (US 2002/0032777) in view of Choquier (US 5,951,694), Hayashi (US 6,598,071) and Mangipudi (US 6,728,748).**

7. With respect to Claim 1, Kawata disclosed: "A method for use in a computer system comprising at least one first computer in an existing cluster of computers (Fig 1, objects 107, and 108, and [0037], lines 6-8)", "the system for processing consecutive inquiries associated with a service in an external computer ([0037], lines 4-8), the method comprising:

observing the processing time that the first computer requires for processing a first inquiry of the external computer ([0082], lines 11-20)",

"establishing a threshold standard time ([0067], lines 3-8, where to determine if the load is at or greater than a certain threshold value, the threshold value must be established)";

"comparing the observed processing time to the threshold standard time ([0067], lines 3-8, where the threshold value is compared to the load evaluation value, and [0058], lines 31-33, where the load evaluation value is based on weighting different factors, and [0076], lines 1-6, where the factors include a response time. If the weighting of the response time factor is 1 and the weighting of the other factors is 0, the threshold value is a threshold standard time)", and

rerouting a second inquiry from the first computer to the second computer ([0040], lines 1-5) if the processing time exceeds the threshold standard time ([0067], lines 3-8, where it is possible to select servers in a round-robin fashion where if a load evaluation value of the selected server is at or greater than a threshold value the server is not selected and the next server in the round-robin is selected, and where the load evaluation value includes response time as shown by [0076], lines 1-7)"

Kawata did not ecxplicitly state: "and one second computer", or "performing an availability test to identify the second computer; incorporating the second computer into the existing cluster, if, based on the availability test, no suitable computer is available in the existing cluster", or "and a threshold maximum time; adapting the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the

service is a customer critical service", or "comparing the observed processing time to the threshold maximum time; rerouting the first inquiry to the second computer if the processing time exceeds the threshold maximum time"

However, Choquier disclosed: "and one second computer (Col. 23, lines 36-37, where a second computer is in the pool of unused servers)", or "performing an availability test to identify the second computer (Col. 23, lines 37-40 and Fig. 13, where based on the server load, if it is above the max load, a second computer is identified to be added to the cluster from the pool of unused servers); incorporating the second computer into the existing cluster, if, based on the availability test, no suitable computer is available in the existing cluster (Col. 23, lines 37-40 and Fig. 13, where when no suitable computer is available in the existing cluster, or step 1312 of Fig 13, the second computer is added to the cluster, or step 1314 of Fig 13)".

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata with the teachings of Choquier to include support for adding computers from outside the cluster to accommodate for excess load. Motivation to combine these references comes from Choquier, where: "Loads placed on particular services (or equivalently, particular service groups) may fluctuate relative to one another on a daily basis due to fluctuations in usage of different services... To accommodate for such fluctuations in service usage levels, the on-line services network 100 allocates servers 120 to service groups based on service loads" (Col. 23, lines 27-35).

Therefore, by combining the references one can accommodate for fluctuations in service usage.

The combination of Kawata and Choquier did not explicitly state: “and a threshold maximum time; adapting the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service”, or “comparing the observed processing time to the threshold maximum time; rerouting the first inquiry to the second computer if the processing time exceeds the threshold maximum time”.

However, Hayashi disclosed: “and a threshold maximum time (Col. 10, line 65 – Col 11, line 3, where a threshold maximum time is a preset threshold plus a certain amount of time)”, and

“comparing the observed processing time to the threshold maximum time (Col. 11, lines 1-3);

rerouting the first inquiry to the second computer if the processing time exceeds the threshold maximum time (Col. 11, lines 1-13)”

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata and Choquier with the teachings of Hayashi to include support for two time based threshold values. Motivation to combine these comes from Hayashi, where: “In this way, when determined that a replacement server is required due to the measurement results of traffic volume showing that threshold values were exceeded for a certain amount of time, server switching can be performed when really required and not

when average traffic volume is small even if the traffic status is momentarily bad and exceeds the threshold values" (Col. 11, lines 6-13). Therefore, by combining the references one can reroute requests only when necessary, and avoid rerouting requests for a temporary spike in traffic.

The combination of Kawata, Choquier and Hayashi did not explicitly state: "adapting the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service".

However, Mangipudi disclosed: "adapting the threshold standard time and the threshold maximum time so they are longer if the service is a background service (Col. 7, lines 29-41, where a lower priority, or background, service will be routed to a cluster with more less resources and a server with less resources will become overloaded with a comparatively longer response time threshold when compared to a server with more resources) and shorter if the service is a customer critical service (Col. 7, lines 29-41, where a higher priority, or critical, service will be routed to a cluster with more hardware resources and a server with more resources will become overloaded with a shorter response time threshold when compared to a server with less resources)".

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata, Choquier and Hayashi with the teachings of Mangipudi to include support for a threshold time based on priority. Motivation to combine these tasks comes from being able to

dedicate more resources to critical tasks and perform them faster than a less critical background task.

8. With respect to Claim 7, Kawata disclosed: "A computer-readable storage medium ([0104], lines 1-5) that stores a set of instructions that when executed by a processor performs a method of routing external computer inquires associated with a service in an external computer ([0037], lines 4-8), the computer-readable medium executed by the set of instructions comprising:

prompting an application to observe the processing time that a first computer in an existing cluster of computers (Fig 1, objects 107, and 108, and [0037], lines 6-8) requires for processing a first inquiry of an external computer ([0082], lines 11-20)", and

"prompting the application to establish a threshold standard time ([0067], lines 3-8, where to determine if the load is at or greater than a certain threshold value, the threshold value must be established)";

"prompting the application to compare the observed processing time to the threshold standard time ([0067], lines 3-8, where the threshold value is compared to the load evaluation value, and [0058], lines 31-33, where the load evaluation value is based on weighting different factors, and [0076], lines 1-6, where the factors include a response time. If the weighting of the response time factor is 1 and the weighting of the other factors is 0, the threshold value is a threshold standard time)", and

Prompting the application to reroute a second inquiry from the first computer to the second computer ([0040], lines 1-5) if the processing time exceeds the threshold standard time ([0067], lines 3-8, where it is possible to select servers in a round-robin fashion where if a load evaluation value of the selected server is at or greater than a threshold value the server is not selected and the next server in the round-robin is selected, and where the load evaluation value includes response time as shown by [0076], lines 1-7)"

Kawata did not explicitly state: "prompting the application to perform an availability test to identify a second computer" or "prompting the application to incorporate the second computer into the existing cluster, if, based on the availability test, no suitable computer is available in the existing cluster" or "and a threshold maximum time; prompting the application to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service", or "prompting the application to compare the observed processing time to the threshold maximum time; prompting the application to reroute the first inquiry to the second computer if the processing time exceeds the threshold maximum time".

However, Choquier disclosed: "prompting the application to perform an availability test to identify a second computer (Col. 23, lines 37-40 and Fig. 13, where based on the server load, if it is above the max load, a second computer is identified to be added to the cluster from the pool of unused servers)", and

"prompting the application to incorporate the second computer into the existing cluster, if, based on the availability test, no suitable computer is available in the existing cluster (Col. 23, lines 37-40 and Fig. 13, where when no suitable computer is available in the existing cluster, or step 1312 of Fig 13, the second computer is added to the cluster, or step 1314 of Fig 13)".

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata with the teachings of Choquier to include support for adding computers from outside the cluster to accommodate for excess load. Motivation to combine these references comes from Choquier, where: "Loads placed on particular services (or equivalently, particular service groups) may fluctuate relative to one another on a daily basis due to fluctuations in usage of different services... To accommodate for such fluctuations in service usage levels, the on-line services network 100 allocates servers 120 to service groups based on service loads" (Col. 23, lines 27-35). Therefore, by combining the references one can accommodate for fluctuations in service usage.

The combination of Kawata and Choquier did not explicitly state: "and a threshold maximum time; prompting the application to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service", or "prompting the application to compare the observed processing time to the threshold maximum time; prompting the application to reroute the first inquiry to

the second computer if the processing time exceeds the threshold maximum time".

However, Hayashi disclosed: "and a threshold maximum time (Col. 10, line 65 – Col 11, line 3, where a threshold maximum time is a preset threshold plus a certain amount of time)", and

"prompting the application to compare the observed processing time to the threshold maximum time (Col. 11, lines 1-3);

prompting the application to reroute the first inquiry to the second computer if the processing time exceeds the threshold maximum time (Col. 11, lines 1-13)"

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata and Choquier with the teachings of Hayashi to include support for two time based threshold values. Motivation to combine these comes from Hayashi, where: "In this way, when determined that a replacement server is required due to the measurement results of traffic volume showing that threshold values were exceeded for a certain amount of time, server switching can be performed when really required and not when average traffic volume is small even if the traffic status is momentarily bad and exceeds the threshold values" (Col. 11, lines 6-13). Therefore, by combining the references one can reroute requests only when necessary, and avoid rerouting requests for a temporary spike in traffic.

The combination of Kawata, Choquier and Hayashi did not explicitly state: "prompting the application to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service".

However, Mangipudi disclosed: "prompting the application to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service (Col. 7, lines 29-41, where a lower priority, or background, service will be routed to a cluster with more less resources and a server with less resources will become overloaded with a comparatively longer response time threshold when compared to a server with more resources) and shorter if the service is a customer critical service (Col. 7, lines 29-41, where a higher priority, or critical, service will be routed to a cluster with more hardware resources and a server with more resources will become overloaded with a shorter response time threshold when compared to a server with less resources)".

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata, Choquier and Hayashi with the teachings of Mangipudi to include support for a threshold time based on priority. Motivation to combine these tasks comes from being able to dedicate more resources to critical tasks and perform them faster than a less critical background task.

9. With respect to Claim 8, Kawata disclosed: "A system for processing consecutive inquiries associated with a service in an external computer ([0037], lines 4-8) comprising: a first computer in an existing cluster of computers (Fig 1, objects 107, and 108, and [0037], lines 6-8)" and "an application operative to observe the processing time that the first computer requires for processing a first inquiry of an external computer ([0082], lines 11-20)" and

"to establish a threshold standard time ([0067], lines 3-8, where to determine if the load is at or greater than a certain threshold value, the threshold value must be established)";

"to compare the observed processing time to the threshold standard time ([0067], lines 3-8, where the threshold value is compared to the load evaluation value, and [0058], lines 31-33, where the load evaluation value is based on weighting different factors, and [0076], lines 1-6, where the factors include a response time. If the weighting of the response time factor is 1 and the weighting of the other factors is 0, the threshold value is a threshold standard time)", and

to reroute a second inquiry from the first computer to the second computer ([0040], lines 1-5) if the processing time exceeds the threshold standard time ([0067], lines 3-8, where it is possible to select servers in a round-robin fashion where if a load evaluation value of the selected server is at or greater than a threshold value the server is not selected and the next server in the round-robin is selected, and where the load evaluation value includes response time as shown by [0076], lines 1-7)".

Kawata did not explicitly state: “a second computer” or “an application operative to perform an availability test to identify the second computer; incorporate the second computer into the existing cluster, if, based on the availability test, no suitable computer is available in the existing cluster” or “and a threshold maximum time; to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service”, or “to compare the observed processing time to the threshold maximum time; rerouting the first inquiry to the second computer if the processing time exceeds the threshold maximum time”.

However, Choquier disclosed: “a second computer (Col. 23, lines 36-37, where a second computer is in the pool of unused servers)” or “an application operative to perform an availability test to identify the second computer (Col. 23, lines 37-40 and Fig. 13, where based on the server load, if it is above the max load, a second computer is identified to be added to the cluster from the pool of unused servers) to incorporate the second computer into the existing cluster, if, based on the availability test, no suitable computer is available in the existing cluster (Col. 23, lines 37-40 and Fig. 13, where when no suitable computer is available in the existing cluster, or step 1312 of Fig 13, the second computer is added to the cluster, or step 1314 of Fig 13)”.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata with the teachings of Choquier to include support for adding computers from outside the cluster to accommodate for excess load. Motivation to combine these references comes

from Choquier, where: “Loads placed on particular services (or equivalently, particular service groups) may fluctuate relative to one another on a daily basis due to fluctuations in usage of different services... To accommodate for such fluctuations in service usage levels, the on-line services network 100 allocates servers 120 to service groups based on service loads” (Col. 23, lines 27-35). Therefore, by combining the references one can accommodate for fluctuations in service usage.

The combination of Kawata and Choquier did not explicitly state: “and a threshold maximum time; to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service”, or “to compare the observed processing time to the threshold maximum time; to reroute the first inquiry to the second computer if the processing time exceeds the threshold maximum time”.

However, Hayashi disclosed: “and a threshold maximum time (Col. 10, line 65 – Col 11, line 3, where a threshold maximum time is a preset threshold plus a certain amount of time)”, and

“to compare the observed processing time to the threshold maximum time (Col. 11, lines 1-3);

to reroute the first inquiry to the second computer if the processing time exceeds the threshold maximum time (Col. 11, lines 1-13)”

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata and Choquier with

the teachings of Hayashi to include support for two time based threshold values. Motivation to combine these comes from Hayashi, where: “In this way, when determined that a replacement server is required due to the measurement results of traffic volume showing that threshold values were exceeded for a certain amount of time, server switching can be performed when really required and not when average traffic volume is small even if the traffic status is momentarily bad and exceeds the threshold values” (Col. 11, lines 6-13). Therefore, by combining the references one can reroute requests only when necessary, and avoid rerouting requests for a temporary spike in traffic.

The combination of Kawata, Choquier and Hayashi did not explicitly state: “to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service and shorter if the service is a customer critical service”.

However, Mangipudi disclosed: “to adapt the threshold standard time and the threshold maximum time so they are longer if the service is a background service (Col. 7, lines 29-41, where a lower priority, or background, service will be routed to a cluster with more less resources and a server with less resources will become overloaded with a comparatively longer response time threshold when compared to a server with more resources) and shorter if the service is a customer critical service (Col. 7, lines 29-41, where a higher priority, or critical, service will be routed to a cluster with more hardware resources and a server

with more resources will become overloaded with a shorter response time threshold when compared to a server with less resources)".

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata, Choquier and Hayashi with the teachings of Mangipudi to include support for a threshold time based on priority. Motivation to combine these tasks comes from being able to dedicate more resources to critical tasks and perform them faster than a less critical background task.

10. With respect to Claims 2, 11 and 16, the combination of Kawata, Choquier, Hayashi and Mungipudi disclosed: "wherein the standard time is dependent on the configuration of the first computer (Kawata, [0039], lines 1-4 and [0070], lines 1-15, where depending on the processing power of the server, the load evaluation levels differ)".

11. With respect to Claims 3, 12 and 17, the combination of Kawata, Choquier, Hayashi and Mungipudi disclosed: "wherein the processing time is determined relative to a quantity of data (Kawata, [0044], lines 11-14)".

12. With respect to Claims 4, 13 and 18, the combination of Kawata, Choquier, Hayashi and Mungipudi disclosed: "wherein the processing times of consecutive inquiries are taken into account during observation (Kawata, [0040],

lines 1-5, where the server with the lightest load is selected, hence the server that is processing the least intensive previous inquiries)".

13. With respect to Claim 5, the combination of Kawata, Choquier, Hayashi and Mungipudi disclosed: "The method according to claim 1 wherein the step of observing is performed by an observer module (Kawata, [0076], lines 1-7, where the load evaluation generation processing module generates load evaluation values) and the step of rerouting is performed by a rerouter module (Kawata, [0069], lines 1-3, where the load balancer distributes service requests and [0067], lines 3-8, where if a load evaluation value is at or greater than a threshold value, the next server in the round robin is selected)".

14. With respect to Claim 6, the combination of Kawata, Choquier, Hayashi and Mungipudi disclosed: "The method according to claim 1, wherein the steps of observation and rerouting are induced by a management program within the system (Kawata, [0038], lines 1-5)".

15. With respect to Claims 10, 15 and 20, the combination of Kawata, Choquier, Hayashi and Mungipudi disclosed: "wherein the standard time is fixed relative to a stipulated number of inquiries (Hayashi, Col. 7, lines 56-67, where a response time results threshold must be exceeded a fixed number of times) such that rerouting occurs only when the processing time exceeds the standard time in more than a predetermined number of allowed incidences (Hayashi, Col. 7, lines

56-67, where a response time result exceeds a threshold a fixed number of times and Col. 8, lines 26-35 where a substitute server is used instead)".

**16. Claims 9, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawata, Choquier Hayashi and Mangipudi in view of Boyd et al. (US 7,251,691 B2).**

17. With respect to Claims 9, 14 and 19, the combination of Kawata, Choquier, Hayashi and Mungipudi did not explicitly state: "wherein the processing time is the floating average time that the first computer requires for processing a stipulated number of inquiries".

However, Boyd disclosed: "wherein the processing time is the floating average time that the first computer requires for processing a stipulated number of inquiries (Col. 3, lines 21-26, specifically moving average)".

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the load balancing system of Kawata, Choquier, Hayashi and Mungipudi with the teachings of Boyd to include support for floating, or moving averages. Motivation to combine these references comes from Boyd, where: "The operation of the present invention is autonomic by continuously updating the average latency time for each storage device. The updated average latencies for each storage device are used each time a new consistent transactions set is transferred to the peer computers for storage. The updated average latency time is based upon a moving average with adjustable weighting

of past and present measurements. This enables the present invention to adapt to changing conditions" (Col. 3, lines 19-27). Therefore by combining the references the load balancing system of Kawata can include using moving averages to adapt to changing conditions.

***Response to Arguments***

18. Applicant's arguments, see A. Objection to the Drawings, filed 2 February 2009, with respect to Objection to the Drawings have been fully considered and are persuasive. The Objection of the Drawings has been withdrawn.

19. Applicant's arguments, see B. Claim Rejections Under 35 USC 101, filed 2 February 2009 have been fully considered but they are not persuasive. The specification defines computer readable storage medium to include paper. See pg 11, lines 11-12.

20. Applicant's arguments, see pg 11, C. 35 USC 103, with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

21. Applicant's arguments, see pg 12, lines 8-10 have been fully considered but they are not persuasive. Applicant argues: "[Kawata] does not disclose

'comparing' a 'threshold standard time' or 'threshold maximum time,' as claimed, because the value being compared in Kawata is a multi-factor load evaluation".

Examiner respectfully disagrees. The load evaluation value of Kawata is based on load factors. See [0058], lines 31-33, where the load evaluation value is based on weighting different factors, and [0076], lines 1-6, where the factors include a response time. If the weighting of the response time factor is 1 and the weighting of the other factors is 0, the load evaluation value is a threshold standard time.

22. Applicant further argues that independent claims 7 and 8 contain similar limitations to claim 1 and therefore are allowable. Examiner respectfully disagrees, see rejections and arguments above.

23. Applicant further argues that dependent claims 2-6 and 9-20 are allowable based on their dependent nature on independent claims 1, 7 and 8. Examiner respectfully disagrees, see rejections and arguments above.

## ***Conclusion***

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW S. LINDSEY whose telephone number is (571)270-3811. The examiner can normally be reached on Mon-Thurs 7-5, Fridays 7-12.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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MSL
5/8/2009

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